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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/521).

The Counter-Terrorism Committee has received the attached third report from Estonia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 18 February 2003 from the Permanent Mission of Estonia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Estonia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) of 28 September 2001 concerning counter-terrorism and has the honour to submit the further supplementary report in accordance with the letter from the Chairman of the Counter-Terrorism Committee dated 15 November 2002 (see enclosure).

Enclosure

Further supplementary report for the Counter-Terrorism Committee regarding the measures taken by Estonia to implement resolution 1373 (2001)

In addition to the already presented (pursuant to paragraph 6 of resolution 1373 (2001)) Estonian report (24 July 2002), and pursuant to Counter-Terrorism Committee's note verbale dated 15 November 2002 Estonia is hereby providing a further supplementary report concerning the implementation of the resolution 1373 (2001).

1.2 The amendments to the Money Laundering Prevention Act (hereinafter: **MLPA**), which will presumably be submitted to the Parliament in the first half of 2003 and is expected to be adopted by the end of 2003, also defines the financing of terrorism, and regulates in greater detail the financing of terrorism as an offence. This definition is based upon the UN Convention for the Suppression of the Financing of Terrorism; resolution 1373 (2001); and the Common Position of the European Union Council, Regulation No. 2580/2001, of 27 December 2001, specifying the restrictive measures to be used against particular persons and entities, for the purpose of combating terrorism.

Draft amendments to the MLPA provide for an additional list of operations and transactions whereby the client must be identified in order to avoid the possibility of money laundering or the financing of terrorism. Draft amendments to the MLPA also oblige credit and financial institutions to notify the Financial Intelligence Unit (FIU) if, in the course of managing their clients' financial affairs, they find indications referring to the financing of terrorism. In the case of a reasoned suspicion of the financing of terrorism, the FIU is entitled to suspend the operation, or limit the use of the resources of the account for up to 2 working days after the client has inquired about the reasons for the suspension of the operation The prescribed restrictive measures may be revealed only after the FIU has given its permission to do so. Credit and financial institutions are forbidden from informing the person suspected of financing terrorism about the notice given to the FIU, unless the FIU has suspended the operation and given permission to inform the person.

Moreover, according to these amendments, the Penal Code will be supplemented, and the financing of terrorism will explicitly be made a criminal offence. The maximum punishment for a person involved is 8 years imprisonment, and for a legal entity – compulsory dissolution.

Estonian legislation allows the international co-operation in the case of suspected terrorism financing on the same basis as in the case of money laundering. Hereby, the referred legal provisions will help to harmonize Estonian legislation with relevant UN instruments.

1.3 In addition to the information provided in our earlier reports, the amendments to the MLPA will introduce some changes into the procedures for the freezing of funds linked to terrorism financing. According to the draft act, credit and financial institutions shall be obliged to inform the Financial Intelligence Unit (**FIU**) about any

suspicion of terrorism financing. The FIU shall be given the authority to study reports of suspected transactions linked to terrorism financing.

Amendments to the MLPA specify the rules regarding the funds associated (also presumably) with money laundering or terrorism, and state that if in the event of a reasonable suspicion of money laundering, the possessor or owner of the property does not provide the documentation proving the legal origin of the property within 2 days of the suspension of the transaction, the FIU is entitled to issue a warrant to seize the property in order to guarantee that the property will be retained until the matter of the legality of its origin has been settled. The FIU will apply to the administrative court for turning the arrested property into the ownership of the state in case no proof has been provided detailing the legal origin of the property, within one year of the seizing of the property.

Thus, seizing resources is not primarily linked to terrorist offences, but the possessor or owner of the property bears the burden of proof to justify the legal origin of the resources.

The International Sanctions' Act, which was adopted on 4 December 2002, provides measures for the domestic application of international sanctions: business and other relationships should be prohibited with persons and entities that are reluctant to obey the rules of international law and principles.

1.4 The International Sanctions Act (**ISA**) was adopted by the Parliament 4 December 2002 and came into force on 2 January 2003. The Act is now being translated into English in the Legal Translation Center, and we will provide you with it as soon as the official translation is completed. However, it is possible to enclose the nonofficial translation of Article 3 of the ISA, which describes the measures for the domestic implementation of international sanctions. The International Sanctions Act regulates the national implementation of international sanctions when the sanctions have been adopted by:

1) The UN Security Council
2) The Council of the European Union
3) Other international organizations
4) The Government of the Republic on its own initiative.

Paragraph 3 of the Law on International Sanctions stipulates that to the extent necessary for the domestic implementation of an international sanction, the Government of the Republic has the right to adopt the following measures:

1) To prohibit the entry into and stay in Estonia of the natural persons that belong to the sanctioned entity;
2) To prohibit or restrict any trade in goods and other business activities with the sanctioned entity; as well as with its legal and natural persons;
3) To prohibit the granting of loans and credit, as well as payments of monetary resources to the sanctioned entity, as well as to its legal and natural persons;
4) To prohibit to transfer, pledge, or use in any other way any monetary resources, including bills of exchange, cheques and other means of payment, securities, precious metals, precious stones, or other such valuables that belong to the sanctioned entity as well as to its legal and natural persons;

5) To prohibit the transfer, pledging, or giving into use of any monetary resources, including bills of exchange, cheques and other means of payment, securities, precious metals, precious stones, or other such valuables to the sanctioned entity as well as to its legal and natural persons;
6) To prohibit the conclusion of transactions with immovable or movable property which is entered in a register by the sanctioned entity as well as with its legal and natural persons;
7) To prohibit to give any information to, or to communicate with the sanctioned entity or to restrict the delivery of information or communication;
8) To prohibit or restrict the traffic, including land, water, and air transport, to or from sanctioned entity;
9) To prohibit or restrict any co-operation with the sanctioned entity in the field on science, education, vocation, culture, or defence.

With the adoption of the International Sanctions Act, several other Acts were amended: the credit and financial institutions are now obliged to introduce in their domestic regulations relevant provisions which would enable them to implement international sanctions, adopted pursuant to the International Sanctions Act.

1.5 Penal Code is divided into two parts - General part and special part. Special part prescribes the statutory definitions of offences. When the concrete legal norms of the Special Part are being applied, the norms of the General Part must always be taken into account. The General Part gives the general bases of penal responsibility. The Articles of the Penal Act, which condemn terrorism, are incorporated into the chapter titled Offences Against State Power. The Code does not differentiate between terrorist acts, which have been aimed against the homeland and its citizens, or against some other country.

Article 8 of the Penal Code states the applicability of the penal law to acts against internationally protected legal rights. This article states that: "*Regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to an act committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding on Estonia.*"

This article includes the internationally accepted principle of universal jurisdiction. According to this principle, the penal law of a state is applicable to all persons irrespective of their place of residence, citizenship, and territory where the offence was committed, and irrespective of against whom it was committed. This principle is applicable only to universal crimes – crimes, which offend internationally protected legal rights. All states are interested in the persecution and prosecuting of such crimes. These crimes have been defined in international conventions.

Estonia has joined all the conventions, which are related to terrorism, and thus, the principle of universal jurisdiction stated in Article 8 is applicable to Article 237, and other offences.

Art. 237 of the Penal Code (Terrorism) cannot in any way be interpreted as the criminalization of only those terrorist acts, which are aimed at Estonian citizens or the Estonian state. The Article actually states that acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed with the

intention to provoke war or an international conflict or for political or religious causes, are punishable by 3 to 12 years' imprisonment or life imprisonment. The same act, if committed by a legal person, is punishable by compulsory dissolution. The wording of the referred to provisions reflects the fact that an offence committed against another democratic entity in Estonia, is regarded as an offence against international security. Offences against international security are dealt with in Penal Code Art. 110-112 in greater detail. These Articles specify some of the ways in which terrorist acts can be committed (piracy, the hijacking of aircraft, and attacks against flight safety).

Thus, the articles of terrorism in the Estonian Penal Code are not limited to the terrorist attacks against Estonia.

With regard to the statement, that, according to Estonian laws, the acts described in Article 246 are punishable only if committed on Estonian territory, we would like to draw your attention to Penal Code Art. 6 (Territorial applicability of Penal Code). This Article states clearly that the Estonian penal law applies to acts committed within the territory of Estonia, and to acts committed on board of, or against ships or aircraft registered in Estonia, regardless of the location of the ship or aircraft at the time of the commission of the offence, or regardless of the penal law of the country where the offence is committed.

1.6 In 2004, Estonia intends to become a party to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. The Government will present the ratification Act to the Parliament in April 2003.

1.7 Decisions in extradition cases are made according to international law. For example, the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Convention on Extradition must be met.

The European Convention on Extradition Article 3 Paragraph 1 forbids extradition for political offences or offences connected with political offences. It allows the requested Party to decide whether the offence is political or not. But terrorist offences are not regarded as political offences. To that end, Estonia actively participated in the negotiations dealing with the amending protocol to the European Convention on the Suppression of Terrorism (under the auspices of the Council of Europe), pursuant to which the offences prescribed in all of the anti-terrorism conventions shall not be considered as political offences for the purposes of extradition. So far, in practice, Estonia has never invoked the political offence clause in cases of extradition.

Additional note

Acts related to terrorist acts are punishable regardless of whether the related terrorist act has actually occurred or has been attempted. It derives from the formulation of the Article 237 (Terrorism) which states specifically: "*Acts aimed at causing health damage or death or at unlawful seizure, damaging or destruction of property, committed with the intention to provoke war or an international conflict or for political or religious causes, are punishable*." The formulation "acts aimed at" means that it is enough to bring to account a person for the related acts of a terrorist act irrespective of whether the terrorist act itself has actually occurred or has been attempted. It means that a person may be punished if they are only planning a terrorist act and are only making preparations to commit the act.